

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 3109

IN THE MATTER OF:

Served December 29, 1987

Application of DAMON GARY trading)
as DAMON'S TRANSPORTATION SERVICE)
to transfer Certificate No. 60 to)
DAMON'S TRANSPORTATION COMPANY,)
INC.)

Case No. AP-87-23

Application of DAMON GARY trading)
as DAMON'S TRANSPORTATION SERVICE)
to Amend Certificate No. 60 to)
Include Special Operations for)
Transportation-Disadvantaged)
Persons)

Case No. AP-87-24

By application filed August 31, 1987, Damon Gary trading as Damon's Transportation Service ("Mr. Gary" or "applicant") seeks approval to transfer his Certificate of Public Convenience and necessity No. 60 to Damon's Transportation Company, Inc. ("Damon's Inc."). By separate application filed on the same date, Mr. Gary seeks to amend Certificate No. 60 to include special operations transporting "transportation-disadvantaged" 1/ persons between points in the Metropolitan District, restricted to vehicles having a manufacturer's designed seating capacity of 15 persons or less, including the driver, and further restricted against transportation solely within the Commonwealth of Virginia. The two applications were consolidated for hearing.

A public hearing was held on October 20, 1987, pursuant to Order No. 3066, served September 11, 1987. Mr. Gary testified on his own behalf in the application to amend Certificate No. 60 and presented three public support witnesses. Mr. Gary also testified on behalf of Damon's Transportation Company, Inc., in the transfer application. No protests were filed to either application.

1/ "Transportation-disadvantaged persons are those individuals who by reason of age, physical or mental disabilities are unable without special facilities or special planning or design to utilize transportation facilities and services as effectively as persons who are not so affected." Order No. 2015, served August 7, 1979, at pp. 3-4.

SUMMARY OF THE EVIDENCE

Mr. Gary seeks to amend and transfer his certificate. In deciding the application to amend, the Commission must first determine if Mr. Gary has met his burden of proving that the public convenience and necessity require the proposed expansion of his service. After this determination is made, we will be able to decide whether the authority represented by the Certificate should be transferred to Damon's Inc. Certificate No. 60 authorizes the following transportation:

IRREGULAR ROUTES:

SPECIAL OPERATIONS, round-trip or one-way,
transporting persons confined to wheelchairs:

Between medical treatment facilities located in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District.

RESTRICTIONS: The service authorized herein is restricted to the transportation of non-ambulatory participants in the Medicaid program of the District of Columbia, and is further restricted to transportation in van-type vehicles specially equipped with ramps and mechanical devices for securing wheelchairs in transit.

Mr. Gary has held WMATC operating authority since 1977. He testified as to the need to expand operations under Certificate No. 60. Mr. Gary stated that his company receives two or three calls a week for service from social workers and private-pay persons who seek transportation to and from various places within the Metropolitan District. Since his certificate presently permits him to perform transportation only for persons who are participants in the Medicaid program of the District of Columbia, he is forced to turn down these requests. Based on these requests, he believes that there is a definite need for an additional carrier to enter the market.

Mr. Gary now operates from 6 a.m. to 6 p.m. Monday through Saturday. He plans to extend hours of operation if the application to amend is granted. Mr. Gary currently operates five vehicles, four for consistent use and one for back-up. All are equipped with ramps and devices used for securing wheelchairs. 2/ The vehicles also are equipped with a two-way communications system which enables Mr. Gary to be in constant contact with his drivers. Applicant engages in a regular program of preventive maintenance. Three full-time drivers are employed, and Mr. Gary serves as the fourth full-time driver. All

2/ If this application is approved the applicant will still be required to operate vans equipped with ramps and security devices for wheelchairs.

drivers have at least 10 years driving experience and were personally trained by Mr. Gary in driving techniques and treatment of non-ambulatory passengers.

Mr. Gary submitted a balance sheet for Damon's Transportation Service for December 31, 1986, which lists total assets of \$34,779 including cash of \$17,000 and fixed assets minus depreciation of \$17,779. Mr. Gary listed \$600 under liabilities (wages payable) and \$34,179 as proprietor's equity. Mr. Gary's operating statement for 1986 lists revenues of \$174,814 and \$120,012 in total expenses, yielding a net income of \$54,802.

Applicant does not anticipate a significant increase in expenses if the proposed operations are approved. He does not have immediate plans to add equipment or employees. Applicant submitted, as a late filed exhibit, projected revenues and revenue deductions for an unspecified 12-month period which lists \$24,000 in revenues and \$7,900 in expenses, yielding a net operating income of \$16,100. 3/

Applicant plans to charge \$25 for one-way trips inside the Beltway and \$25 base fare plus \$1.50 per mile to or from points outside the Beltway. A fare of \$50 will be charged for round-trip transportation between points inside the Beltway and \$50 base fare plus \$1.50 per mile for points beyond the Beltway where one or both points are outside the Beltway. If the application to amend is granted, Mr. Gary intends to maintain his existing tariff for services performed under the Medicaid program of the District of Columbia.

Mr. Gary stated that he has been in compliance with the Compact and the Commission's rules and regulations. He will continue to comply if this application is granted.

The first witness to testify on behalf of applicant was Juanita Whitt. Ms. Whitt is a transportation specialist for the Washington Hospital Center. She is responsible for making transportation arrangements to and from medical facilities in Washington, D.C., and Montgomery and Prince George's Counties, Md., for hospital patients. Most of her clients are participants in the Medicaid program, but she also is called upon to arrange transportation for private-pay passengers. Additionally, physicians who see patients at the Center call upon the services of Ms. Whitt. The witness has used the services of other carriers and has had some complaints. Ms. Whitt has had difficulty in securing transportation from existing carriers for private-pay passengers which has led to Hospital Center patients changing appointments or making other arrangements. She believes that

3/ We will assume that the twelve month period represented by the pro forma data is for the period ended December 31, 1988. We will also assume that the data represent additional revenues and expenses generated solely by the proposed operations.

there is a need for additional service for private-pay passengers. Ms. Whitt has used Mr. Gary's service for Medicaid passengers and has found it to be reliable. She estimates that she will be able to refer two to three transportation-disadvantaged clients to Mr. Gary per week from the Center and one to two from physicians' requests.

Linda Barnes, secretary and medical records supervisor at BMA (Biomedical Applications) of Martin Luther King, an outpatient dialysis clinic, also testified on behalf of Mr. Gary. Ms. Barnes' duties include transportation arrangements for patients who receive treatment at the clinic. Many of the dialysis patients are non-ambulatory and, therefore, require special assistance in transportation. Many other ambulatory patients require special transportation assistance because the nature of the treatment received leaves them weakened, thereby rendering them transportation-disadvantaged. Ms. Barnes has used the services of other transportation providers and has had difficulty getting passengers picked-up in time for their appointments. She has also experienced difficulty obtaining transportation for patients who are not Medicaid recipients.

Dialysis treatments are scheduled two to three times a week, which creates even a greater demand for service. When transportation is not available, patients must call upon family members to transport them. If family members are not available, taxicabs are used, but this alternative is inadequate because taxi drivers generally will not assist their passengers into the treatment facility. Ms. Barnes has used Mr. Gary's service for Medicaid passengers and considers it reliable. She has found the drivers to be polite and courteous. The drivers assist passengers into the facility. Ms. Barnes has received favorable comments from passengers about Mr. Gary's service. The witness estimates that she will refer five private-pay transportation-disadvantaged passengers per week to Mr. Gary. Ms. Barnes stated that the need for service would be between points in the District of Columbia and Prince George's County, Md., and the clinic which is located in Washington, D.C. Ms. Barnes believes that additional transportation services are needed for private-pay transportation-disadvantaged individuals and would highly recommend Mr. Gary's service.

The last witness to testify in support of the application was Patrick Miller. Mr. Miller is a resident of Montgomery County and is non-ambulatory. The witness often needs transportation to various points in the District of Columbia, Montgomery and Prince George's Counties in Maryland, and Fairfax County and Washington Dulles International Airport in Virginia. Such trips include transportation to doctors' offices, entertainment and recreation centers, homes of friends, shopping centers, and the Capital Centre. Mr. Miller is not a participant in the Medicaid program. He estimates that he needs transportation seven times a month. He has used other carriers but has not been totally pleased. This witness stopped using one carrier due to discourteous treatment. A second carrier used by the witness has

been reasonably satisfactory but is not always available when needed, causing the witness to reschedule appointments and call upon friends for transportation. The witness tries to give a carrier three days advance notice but often finds that he needs to make a trip unexpectedly and cannot secure transportation. He believes that the entry into the market of an additional carrier would give him an opportunity to engage in activities more spontaneously.

DISCUSSIONS AND CONCLUSIONS

In determining whether to grant or expand a Certificate of Public Convenience and Necessity we look to Title II, Article XII, Section 4(b) of the Compact which requires that an applicant prove he is fit, willing and able to perform properly the proposed transportation and to conform to the provisions of the Compact and the Commission's rules, regulations, and requirements thereunder. Section 4(b) further requires that the applicant prove the proposed service is required by the public convenience and necessity.

Based on a review of the record in AP-87-24, we find Mr. Damon Gary trading as Damon's Transportation Service capable of providing the proposed service. Mr. Gary has experience in passenger transportation as evidenced by the fact that he has held a WMATC certificate for 10 years. The proposed operations would be conducted in essentially the same manner as present operations. Five specially-equipped vehicles and one back-up vehicle will be used. Additional equipment and personnel will be added if demand dictates. Financial data indicate adequate financing to sustain the proposed operations. Mr. Gary evidenced a willingness to continue complying with the Compact and Commission rules and regulations.

We turn now to the matter of whether applicant has satisfied his burden of proving that the public convenience and necessity require the proposed service. The Commission has relied on the test enunciated in Pan-American Bus Lines Operations, 1 MCC 190, 203 [1936], when interpreting this provision of the Compact. The Pan-American test consists of three parts as follows:

. . . whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Mr. Gary produced three public witnesses. All of the witnesses expressed a need for an additional private-pay carrier for the transportation-disadvantaged. Based upon their testimony we find that

Damon Gary, trading as Damon's Transportation Service has met his burden of proving that the proposed service will serve a useful purpose for which there is a demonstrated need. The evidence supports the conclusion that the public purpose found to exist has not been and will not be served as well by existing authorized carriers. No protests having been entered, we conclude that applicant's proposed service will not materially affect the operations of existing carriers. The request to amend Certificate No. 60 will, therefore, be granted.

We now decide the transfer application AP-87-23. This matter comes before us pursuant to Title II, Article XII, Section 4(h) of the Compact which provides that:

No certificate under this section may be transferred unless such transfer is approved by the Commission as being consistent with the public interest.

Damon Gary trading as Damon's Transportation Service (transferor) is a sole proprietor. Damon's Transportation Company, Inc. (transferee) is a District of Columbia corporation established in 1980. Mr. Damon Gary is the sole shareholder and the president of the corporation. As previously mentioned, Mr. Gary represented the corporation at the hearing. Mr. Gary stated that transferee would continue to operate the service in the same manner as it is presently operated. The witness also stated that transferee intends to comply with the Compact, rules and regulations of the Commission.

The corporation's balance sheet dated September 30, 1987, indicates total assets of \$40,200 including \$15,000 in cash. Liabilities of \$1,240 and shareholders equity of \$38,460 are also listed. In reviewing the record, we determine that transferee's financial position is sound. No discernible change in the market is expected as a result of the transfer. Based on these considerations we find the transfer to be in the public interest.

THEREFORE, IT IS ORDERED:

1. That Damon Gary trading as Damon's Transportation Service is hereby conditionally granted authority to transport passengers as follows, contingent upon compliance with the terms of this order:

IRREGULAR ROUTES:

SPECIAL OPERATIONS, round-trip or one-way limited to transportation-disadvantaged persons between points in the Metropolitan District.

RESTRICTED to transportation in vehicles having a manufacturer's designed seating capacity of 15 persons or less, including the driver, and specially equipped with lifts or ramps and mechanical devices for securing wheelchairs in transit,

AND FURTHER RESTRICTED against transportation solely within the Commonwealth of Virginia.

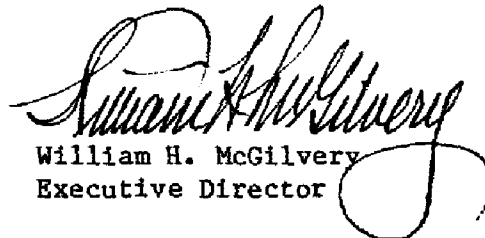
2. That the application of Damon Gary trading as Damon's Transportation Service to transfer Certificate No. 60 to Damon's Transportation Company, Inc., is hereby conditionally granted, contingent upon compliance with the terms of this order.

3. That Damon's Transportation Company, Inc. is hereby directed to file with the Commission (a) three copies of its WMATC Tariff No. 2, (b) a certificate of insurance in accordance with WMATC Regulation No. 62, (c) an equipment list specifying make, model, serial number, vehicle number, and license plate number and jurisdiction for each vehicle to be used in WMATC operations, (d) an affidavit of identification of vehicles pursuant to Regulation No. 68 for which purpose WMATC No. 60 is assigned, and (e) leases pursuant to Regulation No. 69 for each vehicle on its equipment list that is not owned by Damon's Transportation Company, Inc.

4. That unless Damon's Transportation Company, Inc., complies with the preceding requirements within 30 days from the service date of this order, or such additional time as the Commission may authorize, these applications shall stand denied in their entirety, effective upon the expiration of such time for compliance.

5. That upon compliance with the conditions set forth in the preceding paragraphs, Certificate of Public Convenience and Necessity No. 60 will be reissued to Damon's Transportation Company, Inc., in the form and as worded in the appendix to this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


William H. McGilvery
Executive Director

NO. 60

DAMON'S TRANSPORTATION COMPANY, INC.

CAMP SPRINGS, MARYLAND

By Order Nos. 2065 and 3109 of the Washington Metropolitan Area Transit Commission issued December 5, 1979 and December 29, 1987;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order Nos. 2065 and 3109;

THEREFORE, IT IS ORDERED that the said carrier be, and is hereby, granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions and limitations as are now, or may hereafter be, attached to the exercise of the privilege herein granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

SPECIAL OPERATIONS, round-trip or one-way transporting transportation-disadvantaged persons between points in the Metropolitan District;

RESTRICTED to transportation in vehicles having a manufacturer's designed seating capacity of 15 persons or less, including the driver, and specially equipped with lifts or ramps and mechanical devices for securing wheelchairs in transit;

AND FURTHER RESTRICTED against transportation solely within the Commonwealth of Virginia.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous and adequate service to the public in pursuance of the authority granted herein, and that failure so to do shall constitute sufficient grounds for suspension, change or revocation of the certificate.